COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 844 of 2001
(Old No. 1755 of 1987)

Dharampal s/o Dallu
R/o Khushpur, P.S. Ramnagar,
District Nainital **.....Appellant**

Versus

State of U.P. (now Uttarakhand)

.... Respondent

Sri Harsh Vardhan Sah, Amicus Curiae for the appellant
Sri Amit Bhatt, Addl. Govt. Advocate for the State.

~~Approved for reporting.~~
Not approved for reporring.

Date: April 24, 2007

(Dharam Veer, J.)

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 844 of 2001
(Old No. 1755 of 1987)

Dharampal s/o Dallu
R/o Khushpur, P.S. Ramnagar,
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.....

Hon. Dharam Veer, J.

The present appeal has been preferred against the judgment and order dated 02.07.1987 passed by III Additional Sessions Judge, Nainital in Sessions Trial No. 19 of 1986 convicting the appellant U/s 376 I.P.C. and sentencing him to undergo rigorous imprisonment for four years with a fine of Rs. 2,000/- and in default of payment of fine, to undergo further additional simple imprisonment for a period of six months.

2. Briefly stated, the prosecution story is that on 22.09.1985 at about 6 p.m. in the field of one Gurubachan Singh in Village Khawajpur, P.S. Ramnagar, district Nainital, the accused committed rape on Km. Usha. Complainant Suresha Nand lodged a written report on 22.09.1985 at P.S.Ramnagar that on 22.09.1985 at about 6 p.m. his daughter Km. Usha, aged about 8 years was cutting grass in the field of Gurubachan Singh and the accused Dharampal took his daughter in the house and started committing rape on her. On hearing her shrieks, he and one Roop Singh, who were dong work in the nearby field, came to the spot. The accused ran away from there and he saw his daughter Km. Usha lying unconscious with bleeding. On the basis of the written report, chick F.I.R. was prepared at the police station on 22.09.1985 at 11.30 p.m. The prosecutrix was taken

by the complainant and by one constable to the Civil Hospital, Ramnagar, where her medical examination was conducted by Dr. S.Singh on the same day at 12 p.m. The breast of the prosecutrix were not developed. No external sign of injury was present over the whole body. No external sign of injury was present over the genital region. Bleeding was present from inside vagina. Clots were present; hymen was torn and easily admitted two fingers. Patient was admitted for observation as there was bleeding present from vagina. X-ray of wrist and elbow joint was advised and smear was sent for examination. In the opinion of the doctor, no definite opinion could be given about possible sexual intercourse. On 19.10.1985 Dr. G.S.Joshi, Radiologist, took the X-ray of wrist and elbow joint of Km. Usha. The epiphysial ends of the prosecutrix were not fused and in the opinion of Dr. G.S. Joshi, the age of the prosecutrix was less than 14 years.

3. The investigation of the case was conducted by S.I. Rajbal Singh, who recorded the statements of Suresha Nand and Km. Usha and prepared the site-plan. He also took into possession the blood stained underwear and frock of Km. Usha and sealed them and prepared the memo. He also took into his possession the blood stained and unstained earth from the place of occurrence and after sealing them in different containers prepared the Fard. After completing the investigation, he submitted charge-sheet against the accused.

4. Thereafter, the case was committed to the Court of Sessions by the Judicial Magistrate, Kashipur on 18.01.1986. A charge under Section 376 I.P.C. was framed against him to which he pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution has examined P.W.1 Suresha Nand, P.W.2 Km. Usha, P.W.3 S.I. Rajbal Singh, P.W.4 Dr. S. Singh and P.W.5 Dr. G.S. Joshi.

6. P.W.1 Suresha Nand is the complainant and the father of the prosecutrix. He has narrated the entire prosecution case. He has stated that about 1¼ years back at about 6 p.m. he was working in his field and in the

adjoining field of Gurbachan, his daughter Km. Usha, who was aged 8 years, was cutting grass. On hearing her cries, he and Roop Singh reached in the field of Gurbachan Singh and saw the accused tying his girdle and his daughter was lying unconscious and blood was coming out of her vagina. He had recognised the accused. Thereafter, he brought Km. Usha to his house and after scribing the report from one boy he lodged the written report Ex. Ka. 1 at Police Station Ramnagar where she was medically examined. He also proved Ex. Ka. 2 regarding taking into possession underwear and frock of the prosecutrix. He also proved the memo Ex. Ka.3 regarding taking of blood stained and unstained earth by the police into possession.

7. P.W.2 Km. Usha, the prosecutrix, has stated that about 1¼ years back at about the sun-set, she was cutting grass in the field of Sardar Gurbachan Singh. The accused put of his underwear as well as of her and committed sexual intercourse with her, on account of which blood had come from her vagina. Her frock and underwear had also stained with blood. She further deposed that on seeing her father, the accused ran away. She also stated that she was medically examined and her X-ray was done.

8. P.W.3 S.I. Rajbal Singh, the Investigating Officer of the case has stated that he prepared the site plan Ex. Ka. 4 of the place of occurrence. He also took blood stained underwear & frock of the prosecutrix in his possession, sealed them and prepared memo Ex. Ka. 2 of the same. He further stated that he took blood stained and unstained earth from the place of occurrence and sealed them in separate containers and prepared memo of the same Ex.Ka.3. He also took underwear of the accused in his possession vide memo Ex.Ka.5. After completing the investigation of the case, he submitted the charge sheet (Ex.Ka.6) against the accused. He also proved the G.D. entry No. 46 (Ex.Ka.8) in the handwriting of Head Moharrir Brij Mohan. On 23.09.1985, after arresting the accused, he lodged him in Police Station, Ramnagar and made G.D.entry of the same vide Report No. 23 at 14 hours (Ex.Ka.9.).

9. P.W. 4 Dr. S. Singh examined the injuries of the prosecutrix on 22.09.1985 and proved the injury report Ex. Ka. 10. She found following injuries on per person:

"- Breast not developed.
- No external sign of injury present over the whole body.
- No external sign of injury present over the genital region.
- Bleeding present from inside vagina. Clots present.
- Hymen torn, easily admits two fingers.
- Patient is admitted for observation as there is bleeding present from vagina.

Advised:

(1) X ray of wrist and elbow joint right and left for confirmation of age.
(2) Smear taken from vagina sent for examination."

Medical Officer – P.W.4 Dr. S. Singh opined that no definite opinion can be given about possible sexual intercourse.

10. Dr. G.S. Joshi, the Radiologist took the x-ray of wrist and elbow joint of the prosecutrix on 19.10.1985 and proved his report Ex. Ka.11. In his opinion, the age of the prosecutrix was less than 14 years.

11. All the prosecution witnesses were cross-examined at length by the defence counsel, but nothing could be extracted from their testimony so as to discredit the prosecution case.

12. Statement of the accused under Section 313 Cr.P.C. was recorded on 11.03.1987. In his statement, he denied the prosecution story and submitted that he has been falsely implicated in the case.

13. After hearing the learned counsel for the parties and examining the materials placed on record, the learned III Addl. Sessions Judge, Nainital held accused Dharampal guilty for committing the offence punishable under Section 376 I.P.C. and accordingly convicted the accused-appellant and sentenced him to undergo rigorous imprisonment for 4 years and to pay a fine of Rs. 2000/- and in default of payment of fine, the accused was ordered to undergo simple imprisonment for a period of six months.

14. Feeling aggrieved of the judgment and order of the Court below, the accused-appellant has field the present appeal.

15. Sri H.V.Sah, the learned counsel for the appellant, argued that the conviction of the appellant is bad in the eye of law and is against the weight of evidence on record. The accused has been falsely implicated in the case and the medical evidence is also contradictory. He further argued that the sentence awarded to the appellant is too severe and the judgment & conviction passed by the trial Court is liable to be set aside.

16. Sri Amit Bhatt, the learned A.G.A., on the other hand, supported the judgment of the trial Court and submitted that the judgment and order under appeal do not call for any interference.

17. I have heard Sri Harsh Vardhan Sah, the learned Amicus Curiae for the appellant and the learned Addl. Government Advocate for the State and perused the entire records.

18. I do not find any substance in the argument of the learned Amicus Curiae that the accused has been falsely implicated in the case. There is trustworthy testimony of P.W. 1 Suresha Nand and P.W.2 Km. Usha. The complainant – P.W.1 Suresha Nand – is the father of the prosecutrix and the eye witness of the incident. He has clearly stated that he was present in near vicinity where the prosecutrix was raped and after hearing the alarm raised by her daughter Km. Usha, he rushed to the scene of occurrence and saw that the accused running away after committing rape with his daughter. The prosecutrix – P.W.2 Km. Usha – has stated that accused put her down on the ground and committed rape with her. The testimony of P.W.1 Suresha Nand and P.W.2 Km. Usha is also supported by medical evidence of Dr. S.Singh, Medical Officer and Dr. G.S.Joshi, Radiologist. Thus, there is sufficient material on record to prove that the accused has committed the offence punishable U/s 376 I.P.C. The learned lower Court has rightly been convicted the accused for committing the offence punishable under Section 376 I.P.C.

19. I also do not find force in the contention of the learned Amicus Curiae for the appellant that there is contradiction in the medical evidence. The evidence of Dr. S.Singh, Medical Officer and Dr. G.S.Joshi, Radiologist is trustworthy and reliable. The learned counsel for defence could not extract anything in their cross-examination so as to discredit their testimony.

20. Having considered all the facts and circumstances of the case and going through the materials placed on record, I am of the opinion that the findings of the learned trial Court are based on proper appreciation of the evidence on record. The accused-appellant was caught red-handed in committing rape with a minor girl. The prosecution version is also supported by medical evidence. There was sufficient material on record to convict accused-appellant U/s 376 I.P.C. and, therefore, the conviction of the accused-appellant is perfectly justified as the same is based on proper appreciation of the evidence. The prosecutrix has stated that the accused committed rape on her. Her evidence is supported by the evidence of Dr. S.Singh, Medical Officer and Dr. G.S.Joshi, Radiologist. Therefore, no interference is called for on the finding of the trial Court with regard to the conviction and sentence awarded by the Trial Court U/s 376 I.P.C.

19. In this view of the matter, the appeal is dismissed and the order under appeal is hereby confirmed.

(Dharam Veer, J.)

Dated: April 24, 2007
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